

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2761) TO EXTEND THE
TERRORISM INSURANCE PROGRAM OF THE DEPARTMENT OF THE
TREASURY, AND FOR OTHER PURPOSES

SEPTEMBER 18, 2007.—Referred to the House Calendar and ordered to be printed

Mr. ARCURI, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 660]

The Committee on Rules, having had under consideration House Resolution 660, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2761, the Terrorism Risk Insurance Revision and Extension Act of 2007, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill, modified by the amendment printed in Part A of this report, shall be considered as adopted. The bill as amended shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against provisions in the bill as amended.

The rule makes in order only those further amendments printed in Part B of this report. The further amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the further amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recommit with or without instructions. The

rule provides that the Chair may postpone further consideration of the bill to a time designated by the Speaker.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI) and against the bill, as amended, the Committee is not aware of any points of order against consideration of the bill or against the bill as amended. The waivers of all points of order are prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 303

Date: September 18, 2007.

Measure: H.R. 2761.

Motion by: Mr. Dreier.

Summary of motion: To grant an open rule.

Results: Defeated 2–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 304

Date: September 18, 2007.

Measure: H.R. 2761.

Motion by: Mr. Dreier.

Summary of motion: That in the matter proposed to be self-executed by the rule relating to the expedited consideration in the House of a Joint Resolution, the waiver of all points of order against the Joint Resolution and against its consideration not include a waiver of clause 10 of House rule XXI, relating to “pay as you go” enforcement.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 305

Date: September 18, 2007.

Measure: H.R. 2761.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Brown-Waite (FL) and Rep. Buchanan (FL), #4, to extend the Terrorism Risk Insurance Fund to cover insured losses resulting from natural disasters for states that have established a reinsurance fund. Natural disasters include earthquakes and perils resulting from earthquakes, such as tsunamis and fire; tropical cyclones having maximum sustained winds of at least 74 miles per hour, such as typhoons and hurricanes; tornados; volcanic eruptions; catastrophic windstorms; and any other naturally occurring catastrophe except flood.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 306

Date: September 18, 2007.

Measure: H.R. 2761.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Price, Tom (GA) #1, to require that any provision of TRIA that results in costs to the federal government must be offset by decreases in spending.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 307

Date: September 18, 2007.

Measure: H.R. 2761.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hensarling (TX), #5, to require companies to pay an annual, non-refundable premium, determined by the Treasury Secretary based on a percentage of a company's direct earned premiums, to be eligible for TRIA participation for that year. Premiums would be kept in a reserve fund for future use to cover the costs of a certified TRIA incident exceeding the industry retention level or for any subsequent federal program enacted to provide financial assistance for the health care related costs of victims of certified TRIA incident.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 308

Date: September 18, 2007.

Measure: H.R. 2761.

Motion by: Mr. McGovern.

Summary of motion: To report the rule.

Results: Adopted 8–3.

Vote by Members: McGovern—Yea; Hastings (FL)—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Diaz-Balart—Nay; Sessions—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENT CONSIDERED AS ADOPTED

The amendment would ensure that the bill complies with the new PAYGO requirements. It would require the enactment of a joint resolution to permit Federal compensation under the Ter-

rorism Risk Insurance Act of 2002. The joint resolution, approving a certification by the Secretary of Treasury (in concurrence with the Secretaries of State and Homeland Security, and the Attorney General) that there has been an act of terrorism, would be considered by Congress under fast-track procedures.

SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. Frank (MA): Manager’s Amendment. The manager’s amendment clarifies the certification process for acts of NBCR (nuclear, biological, chemical, or radiological) terrorism, applies the reset mechanism to the NBCR deductible, and provides that the Consumer Price Index will be used to adjust for inflation the dollar amounts used in TRIA. The amendment also makes technical and conforming changes. (10 minutes)

2. Pearce (NM): The amendment raises the deductible set at 5% above \$1,000,000,000 by 1% each program year, rather than by .5% as the bill is written. (10 minutes)

PART A—TEXT OF AMENDMENT TO BE CONSIDERED AS ADOPTED

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, at the end of section 102(1), add the following new subparagraph:

“(F) COMPENSATION SUBJECT TO FURTHER CONGRESSIONAL ACTION.—Notwithstanding any certification of an act under this paragraph as an act of terrorism or an act of NBCR terrorism, Federal compensation under the Program shall be subject to the provisions of section 103(h).

“(G) SUBMISSION OF CERTIFICATION UNDER THIS PARAGRAPH.—Upon any certification under subparagraph (A), the Secretary shall submit such certification to the Congress.”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in section 103(a)(2), before “shall pay” insert “, subject only to subsection (h)(1),”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in section 103(b), redesignate paragraphs (1) through (4) as paragraphs (2) through (5), respectively.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in section 103(b), after “unless—” insert the following new paragraph:

“(1) there is enacted a joint resolution for payment of Federal compensation with respect to the act of terrorism that resulted in the insured loss;”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in the matter in section 103(e)(1)(A) that precedes clause (i), after “paid by the Secretary” insert “, subject to subsection (h)(1),”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in the matter in section 103(e)(1)(B)(i) that precedes subclause (II), after “paid by the Secretary” insert “, subject to subsection (h)(1),”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in section 103(e)(1)(C), after “paid” insert “, pursuant to subsection (h)(1),”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in section 103(e)(1)(D), after “paid” insert “, pursuant to subsection (h)(1),”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, strike subparagraph (A) of section 103(e)(3) and insert the following:

“(A) LIMITATION.—Notwithstanding any other provision of Federal or State law, including any State workers’ compensation or other compulsory insurance law, an insurer’s financial responsibility for insured losses from acts of terrorism shall be limited as follows:

“(i) FEDERAL COMPENSATION NOT PROVIDED.—In any case of an act of terrorism with respect to which there has not been enacted a joint resolution for payment of Federal compensation described in subsection (h)(2), an insurer’s financial responsibility for insured losses from such act of terrorism shall be limited to its applicable insurer deductible.

“(ii) FEDERAL COMPENSATION PROVIDED.—In any case of an act of terrorism with respect to which there has been enacted a joint resolution for payment of Federal compensation described in subsection (h)(2), an insurer’s financial responsibility for insured losses from such act of terrorism shall be limited to—

“(I) its applicable insurer deductible; and

“(II) its applicable share of insured losses that exceed its applicable insurer deductible, subject to the requirements of paragraph (2).”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in section 103(e)(3)(B), strike “Notwithstanding” and insert “In the case of any act of terrorism with respect to which there has been enacted a joint resolution for payment of Federal compensation described in subsection (h)(2) and notwithstanding”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, at the end of section 103(e)(3) add the following new subparagraph:

“(E) FEDERAL COURT JURISDICTION AND VENUE IN CASES OF NO FEDERAL COMPENSATION.—In the case of any act of terrorism with respect to which there has not been enacted a joint resolution for payment of Federal compensation described in subsection (h)(2)—

“(i) all claims relating to or arising out of an insurer’s financial responsibility for insured losses from such act of terrorism shall be within the original and exclusive jurisdiction of the district courts of the United States, in accordance with the procedures established in clause (iii);

“(ii) all pending State court actions that relate to or arise out of an insurer’s financial responsibility for insured losses from such act of terrorism shall be re-

moved to a district court of the United States in accordance with clause (iii); and

“(iii) not later than 90 days after the Secretary’s certification of such act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate one district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim relating to or arising out of an insurer’s financial responsibility for insured losses from such act of terrorism.”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, in the first sentence of section 103(e)(4)(F), after “to the effect that” insert the following: “, in the case of any act of terrorism with respect to which there has been enacted a joint resolution for payment of Federal compensation described in subsection (h)(2),”.

In the matter proposed to be inserted by the amendment made by section 3(a)(1) of the bill, after the period at the end of section 103(e)(4)(F) insert the following: “All policies for property and casualty insurance and group life insurance shall be deemed to contain, and insurers shall be permitted to include in their policies, a provision to the effect that, in the case of insured losses resulting from any act of terrorism with respect to which there has not been enacted a joint resolution for payment of Federal compensation described in subsection (h)(2), no insurer shall be obligated to pay for any portion of any such insured losses that exceeds its applicable insurer deductible.”.

Page 56, line 5, strike the closing quotation mark and the semicolon at the end.

Page 56, after line 5, insert the following new subsection:

“(h) PRIVILEGED PROCEDURE FOR JOINT RESOLUTION FOR PAYMENT OF FEDERAL COMPENSATION.—

“(1) IN GENERAL.—The Secretary shall pay the Federal share of compensation under the Program for insured losses resulting from an act of terrorism only if there is enacted a joint resolution for payment of Federal compensation with respect to such act of terrorism.

“(2) JOINT RESOLUTION.—For purposes of this subsection, the term ‘joint resolution for payment of Federal compensation’ means a joint resolution that—

“(A) does not have a preamble;

“(B) the matter after the resolving clause of which is as follows: ‘That the Congress approves of the certification by the Secretary of the Treasury under section 102(1)(A) of the Terrorism Risk Insurance Act of 2002.’; and

“(C) the title of which is as follows: ‘To permit Federal compensation under the Terrorism Risk Insurance Act of 2002’.

“(3) INTRODUCTION AND REFERRAL.—Upon receipt of a submission under section 102(1)(G), the joint resolution described in this subsection shall be introduced by the majority leader of each House or his designee (by request). In the case in which a House is not in session, such joint resolution shall be so introduced upon convening the first day of session after the date of receipt of the certification. Upon introduction, the joint reso-

lution shall be referred to the appropriate calendar in each House.

“(4) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

“(A) PROCEEDING TO CONSIDERATION.—Upon referral to the appropriate calendar, it shall be in order to move to proceed to consider the joint resolution in the House. Such a motion shall be in order only at a time designated by the Speaker in the legislative schedule within two legislative days. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

“(B) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except one hour of debate equally divided and controlled by a proponent and an opponent and one motion to limit debate on the joint resolution. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

“(5) CONSIDERATION IN THE SENATE.—

“(A) PROCEEDING.—Upon introduction, the joint resolution shall be placed on the Calendar of Business, General Orders. A motion to proceed to the consideration of the joint resolution shall be in order at any time. The motion is privileged and not debatable. A motion to proceed to consideration of the joint resolution may be made even though a previous motion to the same effect has been disagreed to. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to.

“(B) DEBATE.—Debate on the joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours. The time shall be equally divided between and controlled by, the majority leader and the minority leader or their designees.

“(C) DEBATABLE MOTIONS AND APPEALS.—Debate on any debatable motion or appeal in relation to the joint resolution shall be limited to not more than one hour from the time allotted for debate, equally divided and controlled by the majority leader and the minority leader or their designees.

“(D) MOTION TO LIMIT DEBATE.—A motion to further limit debate is not debatable.

“(E) MOTION TO RECOMMIT.—Any motion to commit or recommit the joint resolution shall not be in order.

“(F) FINAL PASSAGE.—The Chair shall put the question on final passage of the joint resolution no later than 72 hours from the time the measure is introduced.

“(6) AMENDMENTS PROHIBITED.—No amendment to, or motion to strike a provision from, a joint resolution considered under this subsection shall be in order in either the Senate or the House of Representatives.

“(7) CONSIDERATION BY THE OTHER HOUSE.—In the case of a joint resolution described in this subsection, if before passage by one House of a joint resolution of that House, that House receives such joint resolution from the other House, then—

“(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

“(B) the vote on final passage shall be on the joint resolution of the other House.

“(8) HOUSE AND SENATE RULEMAKING.—This subsection is enacted by the Congress as an exercise of the rulemaking power of the House of Representatives and Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such rules; and with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.”;

In the matter proposed to be inserted by the amendment made by section 4(1) of the bill, in section 106A(b)(1), strike “section 106(b)(2)” and insert section “106(b)(3)”.

PART B—TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK OF MASSACHUSETTS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 102(1)(C) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, and insert the following:

“(C) CERTIFICATION OF ACT OF NBCR TERRORISM.—Where a certified act of terrorism is carried out by means of a nuclear, biological, chemical, or radiological weapon or similar instrumentality, the Secretary shall further certify such act of terrorism as an act of NBCR terrorism. If a certified act of terrorism involves any other weapon or instrumentality, the Secretary, in concurrence with the Secretary of State, the Secretary of Homeland Security, and the Attorney General of the United States, shall determine whether the act of terrorism meets the definition of NBCR terrorism in this section. If such determination is that the act does meet such definition, the Secretary shall further certify that such act as an act of NBCR terrorism. Nothing in this subparagraph shall prohibit the Secretary from determining that a single act of terrorism resulted in both NBCR and non-NBCR insured losses.”.

In section 102(11)(I)(ii)(II) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, strike “and” at the end.

In section 102(11)(J)(i) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, add “and” at the end.

In section 102(11)(J) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, strike the period at the end and insert “; and”.

At the end of section 102(11) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, add the following:

“(K) for the fifth additional Program Year and any Additional Program year thereafter, notwithstanding subparagraph (I)(i), if aggregate industry insured losses resulting from a certified act of NBCR terrorism exceed \$1,000,000,000, for any insurer that sustains insured losses resulting from such act of NBCR terrorism, the value of such insurer’s direct earned premiums over the calendar year immediately preceding the Program Year, multiplied by a percentage, which—

“(i) for the fifth additional Program Year shall be 5 percent; and

“(ii) for each additional Program Year thereafter, shall be 50 basis points greater than the percentage applicable to the preceding additional Program Year, except that if an act of NBCR terrorism occurs during the fifth additional Program Year or any additional Program Year thereafter that results in aggregate industry insured losses exceeding \$1,000,000,000, the percentage for the succeeding additional Program Year shall be 5 percent and the increase under this clause shall apply to additional Program Years thereafter;

except that for purposes of determining under this subparagraph whether aggregate industry insured losses exceed \$1,000,000,000, the Secretary may combine insured losses resulting from two or more certified acts of NBCR terrorism occurring during such Program Year in the same geographic area (with such area determined by the Secretary), in which case such insurer shall be permitted to combine insured losses resulting from such acts of NBCR terrorism for purposes of satisfying its insurer deductible under this subparagraph; and except that the insurer deductible under this subparagraph shall apply only with respect to compensation of insured losses resulting from such certified act, or combined certified acts, and that for purposes of compensation of any other insured losses occurring in the same Program Year, the insurer deductible determined under subparagraph (I)(i) shall apply.”.

In section 102(13) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, strike “involves nuclear, biological” and all that follows and insert “involves or triggers nuclear, biological, chemical, or radiological reactions, releases, or contaminations, but only if any aggregate industry insured losses that result from such reactions, releases, or contaminations exceed the amount set forth in paragraph (1)(B)(ii).”.

In section 103(c)(4)(A)(iii)(II)(aa) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, strike “unlawful” and insert “fraudulent”.

In section 103(c)(4)(A)(iii)(II)(bb) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, after “insured person is” insert “substantially”.

In section 103(e)(1)(B)(ii) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, insert “result from any such reactions, releases, or contaminations and that” after “such insured losses that”.

In section 103(e)(1)(B)(ii)(I) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, strike “exceeds” and insert “exceed”.

In section 103(h)(1) of the Terrorism Risk Insurance Act of 2002, in the matter preceding subparagraph (A), as proposed to be amended by section 3(a)(1) of the bill, strike “an appropriate index” and all that follows through the colon and insert “the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the Department of Labor, during the 12-month period preceding such program year, each of the dollar amounts set forth in this title (as such amount may have been previously adjusted), including the following amounts:”.

Strike subparagraph (B) of section 103(h)(1) of the Terrorism Risk Insurance Act of 2002, as proposed to be amended by section 3(a)(1) of the bill, and insert the following:

“(B) The dollar amounts in subparagraphs (J) and (K) of section 102(11) (relating to an insurer deductible threshold based on the amount of aggregate industry insured losses).”.

In section 3 of the bill, redesignate subsection (c) as subsection (d).

In section 3 of the bill, after subsection (b) insert the following new subsection:

(c) REGULATIONS ON CERTIFICATION OF AN ACT OF NBCR TERRORISM.—The Secretary of the Treasury shall issue the regulations to carry out subparagraph (C) of section 102(1) of the Terrorism Risk Insurance Act of 2002, as amended by subsection (a)(1) of this section, not later than the expiration of the 180-day period beginning upon the date of the enactment of this Act.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PEARCE OF NEW MEXICO, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In the matter proposed to be added by the amendment made by section 3(a)(1) of the bill, in section 102(11)(J)(ii), strike “50 basis points” and insert “100 basis points”.